

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EUGENIUSZ POTOZNY, on behalf of himself
and on behalf of all others similarly situated

Plaintiff

v.

ZEKE PROROKOVIC PAINTING, INC. and
ZIVKO PROROKOVIC,

Defendants.

ANSWER

07 CIV. 3541
(CLB) (GAY)

-----X
Defendants, Zeke Prorokovic Painting, Inc. and Zivko Prorokovic, answering the
Complaint states as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the
allegations set forth at those paragraphs designated "1,"

SECOND: Denies the allegations of those paragraphs designated "3," "14," "16,"
"17," "18," "25," "26," "36," "37," "38," "39," "45," "48" and "49."

THIRD: Denies knowledge or information sufficient to form a belief as to the
allegations set forth at those paragraphs designated "2," "7," "8," "10," "11," and "12"
and leaves all questions of law to the Court.

FOURTH: Admits the allegations of those paragraphs designated "4," "5," and
"6."

FIFTH: Denies the allegations of paragraph "9," "20," "27," "28," "29," "30,"
"31," "32," "41," "42," "44" and "46" and leaves all questions of law for the Court.

SIXTH: Denies the allegations of paragraph "13" except to admit that the plaintiff was an employee of the corporate defendant.

SEVENTH: Denies the allegations of paragraph "19" except to admit that the corporate defendant transacted business in the State of New York.

EIGHT: Denies the allegations of paragraph "21," "22," "23" and "24," except to admit that Zivko Prorokovic was the owner and an officer of the corporate defendant, and that he was responsible for the general management of the business conducted by the corporate defendant.

NINTH: Denies the allegations of paragraphs "34" and "35," except to admit that the plaintiff supplied labor to the defendants.

TENTH: The defendants repeat and reallege those allegations of the Answer to those paragraphs of the Complaint designated as paragraphs "33," "40," "43" and "47."

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

The Court is without subject matter jurisdiction of the plaintiff's cause of action asserted under the Fair Labor Standards Act, which claim is exempted from the coverage of such federal statute.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

As an undocumented alien under the Immigration and Nationality Act the plaintiff is without the legal capacity to sue for recovery of wages during that period of time he held such status.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

The Court is without personal jurisdiction over the defendant, Zivko Prorokovic, who was not served with the Summons and Complaint.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

The plaintiff has failed to meet the legal requirements to establish class action status.

WHEREFORE, the defendants demand judgment dismissing the Complaint, together with the costs and disbursements of this action.

DATED: White Plains, New York
July 12, 2007

Yours, Etc.

s/
THOMAS J. TROETTI (7481)
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